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7 UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
8 SAN JOSE DIVISION

9 In re: )

10 Tammy Rae Foley, fdba )  
Bookkeeping Services, fdba )  
Innovative Business Services, )  
11 Debtor. )

Case No. 10-58069 ASW (11)

REF No. NLG-1

12 SETERUS, INC. fka IBM LENDER )  
BUSINESS PROCESS SERVICES, INC., )  
13 as servicer for Federal National Mortgage )  
Association, its successors and/or assigns, )

Date: September 14, 2011  
Time: 2:15 PM  
Judge: Hon. Arthur S. Weissbrodt  
Room: Courtroom 3020  
280 South First Street  
San Jose, CA 95113-3099

14 Movant, )  
15 )

16 vs. )

17 Tammy Rae Foley, fdba )  
Bookkeeping Services, fdba )  
Innovative Business Services, Debtor )

18 Respondent. )  
19 )

20 **OPPOSITION TO THE MOTION FOR RELIEF FROM AUTOMATIC STAY**

21 TO THE HONORABLE ARTHUR S. WEISSBRODT, UNITED STATES BANKRUPTCY  
22 JUDGE:

23 Tammy Rae Foley, fdba Bookkeeping Services, fdba Innovative Business services,  
24 Debtor and Debtor in Possession herein (hereinafter, "Debtor") opposes the Motion for Relief  
25 from the Automatic Stay filed by SETERUS, INC., fka IBM LENDER BUSINESS PROCESS  
26 SERVICES, INC., as servicer for Federal National Mortgage Association, its successors and/or  
27 assigns, on the following grounds:  
28

1                   **THE MOTION IS FATALLY DEFECTIVE FOR ITS FAILURE TO INCLUDE THE**  
2                   **ACCOUNT STATEMENT REQUIRED UNDER BANKRUPTCY LOCAL RULE**  
3                   **(“BLR”) 4001-1 (g).**

4                   1. BLR 4001-1(g) provides as follows:

5                   *Inclusion of an account statement.*

6                   *As to motions for relief from the automatic stay wherein the movant alleges that the*  
7                   *debtor has failed to maintain post-petition payments on an obligation, the motion shall include a*  
8                   *post-petition account statement and a declaration attesting to the statement's accuracy. Both*  
9                   *documents shall be written in language comprehensible to a lay person, and shall include the*  
10                  *following information:*

- 11                  *a. a description of the post-petition obligations that have accrued and are unpaid;*  
12                  *b. all payments received post-petition;*  
13                  *c. the date each post-petition payment was received;*  
14                  *d. the date each post-petition payment was posted to the subject account, if different from*  
15                  *the date received.*

16                  *If, for any reason, the timing or amount of the last payment which fell due pre-petition is*  
17                  *different from any payments which have accrued post-petition, the moving party must briefly*  
18                  *state the reason for the change and whether the debtor was given written notice of the changed*  
19                  *amount.*

20                  *As to defaults in post-petition payments to a Chapter 13 trustee, a printout from the Chapter 13*  
21                  *trustee's on-line information system itemizing post-petition payments will suffice.*

22                  *(2) If the motion for relief from the automatic stay is based upon a failure to make pre-*  
23                  *petition payments, then the requirements for an account statement referenced in*  
24                  *paragraph (g)(1)(a) through (d) shall extend to all pre-petition obligations that have*  
25                  *accrued and are unpaid.*

26                  *(3) If a moving party fails to comply with paragraphs (g)(1) or (2) of this rule, the Court*  
27                  *may, in its discretion, impose such monetary or non-monetary remedies as it deems*  
28                  *appropriate.*

                  2. The motion is fatally defective because it does not include the account statement.

                  There is no description of the post-petition obligations that have accrued and/or are unpaid; there  
is no statement of payments received post-petition; there is no indication of the date each post-  
petition payment was received; further, the Motion fails to comply with BLR 4001-1(g) by  
failing to provide the same required information with respect to the alleged pre-petition defaults.  
There is no account statement, and no declaration by anyone attesting to the accuracy of any  
account statement.

                  3. Movant does submit a Declaration of Glen Gueringer. However, that Declaration is  
useless as well, because it simply purports to incorporate by reference the Relief from Stay  
Cover Sheet; the Relief from Stay Cover Sheet does not contain the required accounting. Debtor

1 requests that this Court impose monetary remedies for Movant's violation of paragraphs  
2 (g)(1) and (2) of BLR 4001-1 in the sum of at least 3 hours of attorney time, at attorney's normal  
3 hourly rate of \$ 350.00/hour, for sanctions of \$ 1,050.00

4 **MOVANT IS NOT THE REAL PARTY OF INTEREST FOR PURPOSES OF**  
5 **BRINGING A RELIEF FROM STAY MOTION**

6 4. Movant claims to be a servicer for Federal National Mortgage Association, its  
7 successors and/or assigns ("Fannie Mae"). Although there is an assignment of the Deed of Trust  
8 showing a transfer from First Horizon Home Loans, a division of First Tennessee Bank, N.A., to  
9 Fannie Mae (Exhibit "3" to Motion), there is no evidence whatsoever submitted to prove that  
10 Movant, SETERUS, Inc., has any authority to bring this motion on behalf of Fannie Mae.

11 5. Finally, the Declaration of Mr. Gueringer indicates that it was made in Beaverton,  
12 Oregon, yet it claims to have been executed under the laws of the State of California ("Gueringer  
13 Declaration, 4: 22-27).

14 6. Based on the Movant's non-compliance with the Bankruptcy Local Rules, and  
15 the other defects in its Motion, Debtor has been forced to make its Qualified Written Request  
16 under RESPA to obtain the requisite mortgage loan information. Debtor is hopeful that  
17 Movant will comply with its duties and acknowledge and answer the request, as required by Real  
18 Estate Settlement Procedures Act Section 2605(e). If Movant fails to comply with the Qualified  
19 Written Request under RESPA, then it is Debtor's intent to proceed with discovery, including,  
20 but not limited to, a deposition and request for production of documents concerning the above.

21 **CONCLUSION**

22 The Motion is out of compliance with the Bankruptcy Local Rules as it does not include  
23 the required Account Statement under BLR 4001-1(g). Debtor asks that the Court impose  
24 monetary sanctions against Movant pursuant to BLR 4001-1(g)(3), in the sum of at least  
25 \$ 1,050.00, based upon three hours of attorney time at \$ 350.00 per hour. The Motion should be  
26 denied for lack of standing because Movant is not the real party in interest, but rather claims to  
27 simply be a servicing agent. There is no evidence of any servicing agreement to prove this  
28 capacity. The Motion should be denied, and the Court should enter such other and further relief  
as is just and proper.

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Respectfully Submitted,

Dated: September 13, 2011

/s/ Henry G. Rendler  
Henry G. Rendler, Esq., State Bar # 83704  
Attorney for Debtor